

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE POLISH PEOPLE'S REPUBLIC ON THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS**

The Government of the French Republic and the Government of the Republic of Poland people's, hereinafter referred to as the "Contracting Parties",

Desiring to enhance economic cooperation between the two States and to create favourable conditions for investments in Poland English and Polish in France;

Convinced that the promotion and protection of such investments will be conducive to the stimulation of capital and technology transfer between the two countries in the interest of their economic development,

Have agreed as follows:

## **Article 1.**

For the purposes of this Agreement:

1. The term "investment" means assets, such as property rights and interests of all kinds, related to an economic activity in any sector, in accordance with the law of the Contracting Party in the territory or maritime zones of the investment which has been made; and, in particular, though not exclusively:

- a) Movable and immovable property as well as any other rights in rem such as mortgages, liens, usufruits, deposits and similar rights;
- b) Shares, stocks, and other forms of participation, even indirect minority, or to companies established in the territory of one of the Parties;
- c) The obligations and rights, claims to any performance having economic value;
- d) Copyrights, industrial property rights, such as patents, licences, trademarks, industrial designs or models, technical processes, trade names and goodwill;

Provided that such assets associated with an economic activity must be or have been invested in accordance with the law of the Contracting Party in the territory or maritime zones of which the investment is made before or after the entry into force of this Agreement.

Any alteration of the form in which assets are invested shall not affect their classification as investment provided that such alteration is not contrary to the legislation of the State in the territory or maritime zones in which the investment is made.

2. The term investor means:

- a) Any natural person having the nationality of one of the contracting parties;
- b) Any juridical person in the territory of one of the Contracting Parties in accordance with their legislation and having its registered office.

3. The term means all amounts yielded returns by an investment interests, such as profits, royalties or during a period of time.

Investment income and in case of reinvestment, income from their reinvestment shall enjoy the same protection as the investment.

4. The term "Maritime Zones" means of marine and submarine areas over which the contracting party exercises, in

accordance with international law, sovereign, sovereign rights or jurisdiction.

## **Article 2.**

Each Contracting Party recognizes and encourages within the framework of its laws and the provisions of this Agreement investments made by investors of the other party in its territory and in the maritime zones.

## **Article 3.**

Each Contracting Party undertakes to provide, in its territory and in the maritime zones to investments of investors of the other party fair and equitable treatment, excluding any unjustified or discriminatory measure which could adversely affect their management, maintenance, use, enjoyment or disposal.

## **Article 4.**

1. Each Contracting Party shall in its territory and in the maritime areas to investors of the other contracting party as regards their investments and activities associated with such investments, the treatment accorded to its investors or the treatment accorded to investors of the most favoured nation, whichever is more favourable.

2. This treatment does not extend to the privileges which either Contracting Party accords to investors of a third State by virtue of its participation in or association of a zone libreéchange, customs union, Common Market or any other form of regional organization or an organization for Mutual Economic Assistance.

3. This agreement does not extend to the privileges granted by either contracting party to any third country under an agreement for the avoidance of double taxation or any other arrangement relating to taxation.

## **Article 5.**

1. Investments made by investors of either Contracting Party shall enjoy, in the territory or maritime zones of the other contracting party; protection and security.

2. The Contracting Parties shall not take any measures of expropriation or nationalization or any other measures, the effect of which is to dispossess, directly or indirectly, an investor of the other party; investments in its territory and in the maritime areas, except for a public purpose and provided that they are neither discriminatory nor contrary to a specific engagement.

The dispossession measures that might be taken shall be subject to the payment of prompt and adequate compensation which shall correspond to the real value of the affected investments immediately before the date on which the measures taken or are known to the public.

Such compensation, its amount and has no later than the date of dispossession. The compensation shall be paid without delay, and effectively realisable freely transferable. It produces until the date of payment, shall include interest at an appropriate interest rate prevailing at the time of dispossession.

3. Investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, state of emergency or national revolt occurring in the territory or maritime zones of the other contracting party benefit, on the part of this latter, from a treatment no less favourable than that accorded to its own investors or to those of the most favoured nation. in any event, they will receive adequate compensation.

## **Article 6.**

1. Each Contracting Party in the territory or maritime zones in which the investments were made by investors of the other Contracting Party shall grant those investors the free transfer of:

a) Profits, dividends, interests and other current income;

b) Royalties arising out of intangible rights, in particular referred to in subparagraph 1 (d) of article 1; (d) of article 1;

c) Payments made for the reimbursement of loans contracted regularly;

d) The proceeds of the sale of or the partial or total liquidation of the investment including the value of the investment capital;

e) Compensation of dispossession or loss as provided for in article 5, paragraphs 2 and 3 above.

2. The nationals of either Contracting Party who have been authorised to work in the territory or maritime zones of the other Contracting Party in respect of an approved investment shall also be authorised to transfer their country of origin in a proportion appropriate remuneration determined in accordance with the legislation of that other party.

3. The transfers referred to in the preceding paragraphs shall be effected without delay formally at the normal rate of exchange applicable on the date of transfer.

## **Article 7.**

1. If the legislation of either contracting party provides a guarantee for investments abroad, it may be granted within the framework of a case-by-case review, to investments made by investors of that Party in the territory or maritime zones of the other party.

2. Investments made by investors of one Contracting Party in the territory or maritime zones of the other party may request the Security referred to in the preceding paragraph only if they have previously obtained accreditation of that other party.

## **Article 8.**

1. Any investment dispute between a Contracting Party and an investor of the other Contracting Party shall as far as possible be settled amicably between the two parties concerned or by domestic remedies.

2. However, disputes concerning dispossession measures referred to in article 5 (2), and in particular those relating to the existence in the amount of compensation, to its terms of payment as well as to the interest rate in case of delay in payment shall be settled under the following conditions:

- If such a dispute cannot be settled amicably within six months from the time at which it was raised by one of the Parties to the dispute, it shall be submitted at the request of either party to arbitration. It shall be settled definitively, in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law, as adopted by the United Nations General Assembly, in its resolution No. 31-98 of 15 December 1976;

- When each Contracting Party has become a party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States done at Washington on 18 March 1965, if such a dispute cannot be settled amicably within six months from the time at which it was raised by one of the Parties to the dispute shall be submitted to the International Centre for Settlement of Investment Disputes (ICSID) for settlement by arbitration.

3. The arbitral tribunal shall act in accordance with the provisions of this Agreement and the rules and principles of international law.

## **Article 9.**

If one of the Contracting Parties, by virtue of a guarantee given in respect of an investment in the territory or maritime zones of the other party makes payment to one of its investors it is thereby entered into the rights and claims of the investor.

Such payments shall not affect the rights of the holder of the security to resort to arbitration or court competent pour-suivre actions brought before it until the end of the procedure.

## **Article 10.**

Investments in respect of a particular undertaking of either Contracting Party to the investors of the other Contracting Party shall be governed, without prejudice to the provisions of this Agreement, the terms of that commitment to the extent that it is more favourable provisions than those laid down in this Agreement.

## **Article 11.**

1. Disputes concerning the interpretation or application of this agreement should, if possible, be settled through diplomatic channels.

2. If within six months from the time at which it was raised by either contracting party to the dispute is not resolved, it shall be submitted, at the request of either Contracting Party, to an ad hoc arbitration tribunal hoc.ad.

3. The Tribunal shall be constituted for each individual case in the following way:

Each Contracting Party shall appoint one member and these two Members shall designate by common agreement, a national of a third State who shall be chairman appointed by both contracting parties. The members of the Tribunal shall be appointed within two months and the Chairman within four months from the date one Contracting Party has informed the other contracting party of its intention to submit the dispute to arbitration.

4. If the periods specified in paragraph 3 above have not been made, either Contracting Party, in the absence of any other agreement, invite the Secretary General of the United Nations to make the necessary appointments. If the Secretary-General is a national of either Contracting Party or if he is otherwise prevented from exercising this function, the Under-Secretary-General the oldest and who is not a national of either Contracting Party shall make the necessary appointments.

5. The arbitral tribunal shall act in accordance with the provisions of this Agreement and the rules and principles of international law.

6. The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be final and binding on the contracting parties.

The tribunal shall determine its own rules of procedure. It will interpret the award at the request of either Contracting Party, unless the Tribunal provides otherwise, in light of the particular circumstances, legal costs, including the business of the arbitrators shall be shared equally between the two Governments.

## **Article 12.**

Each Party shall notify the other of the completion of the internal procedures necessary for the entry into force of this Agreement, which shall take effect one month after the date of receipt of the last notification.

This agreement is concluded for an initial period of ten years and shall continue in force thereafter the term unless one of the Parties denounces through diplomatic channels with one year notice.

On expiry of the period of validity of the present Agreement investments over which it was in force will continue to benefit from the protection of its provisions for a further period of fifteen years.

For the Government of the French Republic:

Pierre Bérégovoy,

Minister of State, Minister of Economy, Finance and Budget

For the Government of the People's Republic of Poland:

Andrzej Wróblewski,

Minister of Finance